

State of Utah

Title and Escrow Commission Meeting

Meeting Information

Date: **October 14, 2008**

Time: 9:30am

Place: **Room 250**
State Capitol

Members

(Attendees = x)

Commission Members

xChair, Canyon W. Anderson, <i>Davis Cnty</i>	xDavid M. Lattin, <i>Salt Lake Cnty</i>
Glen W. Roberts, <i>Utah Cnty</i>	xGarry M. Goodsell, <i>Iron Cnty</i>
xJerry M. Houghton, <i>Tooele Cnty</i>	

Department Staff

xJohn E. "Mickey" Braun, Jr. <i>Ass't Commissioner</i>	xPerri Babalis <i>AG Legal Counsel</i>	xMark Kleinfeld <i>Admin. Law Judge</i>	xTammy Greening <i>MC Examiner</i>
xSheila Curtis <i>MC Examiner</i>	Connie Nowland <i>MC Examiner</i>	xSandra Halladay <i>MC Examiner</i>	xJilene Whitby <i>PIO/Recorder</i>
xTracy Klausmeier <i>P&C Rate & Form Analyst</i>			

Public

Janet Capito	Shellie Barnes	Nancy Frandsen	Lincoln Scoffield
James Seaman	Mike Kirby	Scott Halvorsen	Jeff Merrill
Jeff Wiener	Jack Marinello	David Smith	Michael Lewis
Pete Stevens	Michael Brown	Clayton Hansen	Tim Grubb

MINUTES

- I. **Welcome and Introductions** / Canyon Anderson, Chair
Canyon began the meeting at 9:35 am.
- II. **Adoption of Minutes of Previous Two Meetings**
Garry made the **motion** to approve the minutes of the September 8 regular meeting and September 15 teleconference, Jerry seconded it and the vote was unanimous.
- III. **Review & Concur with Licensee Report**
David made a **motion** to concur with the licensing report, Garry seconded it and the vote was unanimous.
- IV. **Request for Exemption from Title Agency Training Requirements**
There were no exemption requests to review. Canyon asked that **this item be taken off the agenda** until there are exemption requests to review.
- V. **Number of Cases Open & Closed**
 - Canyon commended the department on their investigations.
 - Garry asked how many investigators were being paid from the title assessment. Mickey said one. The other investigators are paid for from the General Fund. Seventy-five percent of the difference between the target base of \$250,000 and amount that comes in above that may be used towards another examiner. **The topic of "Expenditures of the Recovery Fund" should be discussed periodically at upcoming meetings.**
 - Canyon asked if the department was responding by letter when a complaint is received and when it is closed? Mickey was not sure but would make it a priority when the new market

conduct director returns. The previous director was battling cancer and the interim director was stretched with multiple responsibilities.

VI. **Enforcement Activity** / Mark Kleinfeld

Copies of the Stip and Orders were sent to Commission members last week as well as to everyone at the meeting.

- **Utah First Title Ins. Agency, Inc. and Courtney K. Taylor** of Orem. On January 2, 2008 Taylor conducted a real estate escrow for property where no title insurance policy was issued violating 31A-23a-406(10)(c). The recommended penalty is \$1000 for Utah First and \$1500 for Taylor; and an internal audit of escrows conducted since February 2007 to the date of the Order by Brian Knowlton, Solomon Development and Pages Place, LC. Garry asked what would be done with the audit information. He was told it would be reviewed by the market conduct examiners who would then determine the next step. The transaction involved real estate. It was not a split closing or a cash transaction. Garry made a **motion** to approve the penalty, David seconded it and the vote was 3-1 with Jerry opposing it. He would have had the case brought to them along with the results of the audit. Canyon asked if the Commission could be advised of what is found in the audit? Mickey said yes.
- **Atlas Title Ins. Agency, Inc.** of Heber City. Respondent entered into escrow agreement where no real estate transaction was in process and no title insurance was to be issued violating 31A-23a-406(1)(c), and also failed to file rates in violation of 31A-19a-209(3). The recommended penalty is \$15,000 plus probation of 12 months and requirement to return deposits received in connection with the "Reservation Escrow Agreements. Garry said that taking reservation money is common place. It is much like receiving earnest money agreements when a subdivision agreement is filed and recorded. He did not see the basis for this being wrong and said the fine was excessive. Sheila said the code requires a separate escrow account be open for each transaction. It was not in this case. Mickey said the Commission has the option to reject the recommendation. If they do, they must then come up with a penalty the majority can agree upon. The case cannot be dismissed. The respondent stipulated to the facts in this case. Perri was asked if the Commission could review the agreement that was in place when the escrow was done. Perri said the Commission would have to hear the entire case. Perri reminded the Commission that the respondent does not want a hearing. Mickey said that if the penalty is changed the respondent can concur or go to hearing, which the commission could hear if they wanted to. The penalty would no longer be negotiable but up to the ALJ. Garry made a **motion** to disapprove the penalty, Jerry seconded it and David and Canyon opposed it. The vote was 2-2. Garry made a **motion** to reduce the penalty to \$1000 because it is a common practice. Jerry seconded it. Canyon asked if it fit within the matrix? Mark noted that the agency had accepted funds from 42 persons. Garry made his **motion** again. The vote was again 2-2. It was decided that **a conference call would be set up to decide the issue**. Notice will be put on the department's website.
- **Mountain View Title & Escrow, Inc. and Rick D. Hendry** of Ogden. On June 21, 2007 Hendry conducted a "flip" closing without notifying the lender, a violation of 31A-23a-402(1)(a)(i). Recommended forfeiture is \$2000 each for Mountain View and Hendry. The price of the property almost doubled on the second transaction of the flip. Garry said that if this was fraudulent then the fine was not appropriate. Mickey noted that fraud would be a criminal matter, "We are dealing with an administrative violation." Normally cases that appear to involve fraud are turned over to Fraud Division. Garry made a **motion** to approve the penalty and asked to be notified if the case is sent to Fraud. David seconded the motion and the vote was 3 "Yes" vote to 1 "No" vote. Canyon asked Mark to **let the Commission know if the case is referred to Fraud**.
- Jack thought the penalty in the third case was far too low and should have been rejected by the Commission. Hopefully it will be referred to Fraud and receive a higher penalty.

VII. **Old Business**

- **Discussion of Comments from Hearing of R590-153/R592-6 Unfair Inducement**
Canyon asked that the changes to this rule be implemented.
- **Review Changes and Consider Elimination of Top Tier Charge in R592-3 & 4, Minimum Escrow Fee Rule**
 - Canyon asked the Commission for their comments. David said that Subsections 4.(1)(a)(i)(A)&(B) should each be \$150. Canyon said that the “must” in Subsection 3.(2) should be “may” or something similar. Mickey said the wording made clear what the minimum was. The more you quantify it the more unclear it becomes. Pete agreed. The consensus with all members of the public in attendance was that the minimums were still too low and should be raised. Jack said that whenever these fees are lower than the expense of doing business then the fees are too low. Minimums need to reflect the cost of doing business.
 - An individual suggested a fourth level purchase price of over \$1million.
 - Pete said that a big escrow company has a minimum of \$550. He encouraged the Commission to step-up to current day rates.
 - Pete said that the threshold for a mobile notary was \$125.
 - David expressed concern for the first-time homebuyer who is faced with difficulty in coming up with money for a transaction. Line 43 of the fee schedule allows an agent to tack on other expenses to the minimum.
 - A member of the public said that in Utah we have to show we can make a profit. Texas requires a 5-10% profit.
 - Mike said the fees we charge represent the quality of service we give the consumer.
 - Pete said first-time buyers can receive discounts.
 - Lincoln said raising fees will benefit the public. It will keep industry from giving poor service for low price.
 - Pete: House prices have doubled but commissions have remained the same.
 - James: These minimum premiums will become De Facto rates. They are too low. There is no way to operate at these rates. Set the rates at the right level now rather than later.
 - Individual suggested surveying rates of surrounding states. Use that information to help people understand why rates need to be increased. Garry didn’t understand why the Commission needed to set rates so the industry could make a profit. If you are not making money with the rates you are using, charge more.
 - Canyon suggested waiting to make decisions on the rule until Glen returns. Garry will survey his part of the state. David and Jerry agreed to wait. **Put on November’s agenda.**
 - Pete noted that some states base rates on population. Mickey suggested those doing research ask those doing escrow if they are making a profit on escrow alone (not subsidized by title).
- **Sweeping of Title Trust Accounts, R592-12 (R590-212) / Mickey**
In the past, when funds have been swept into a trust account, the account lost its trust features. Recently he has been told this is not always the case now. Banks flag real estate accounts but not others. He will need to investigate this more. James said his bank can flag various types of trust accounts. **James will forward more information about this to Mickey.** Pete said another issue to consider is that bank failures are an issue. Clients needs to be told which bank his money is being deposited into. **Mickey invited people to send him information on this issue to help him make a determination.**
- **Review Changes to R592-11 (R590-136) and R592-10 (R590-187) / Mickey**
The initial draft of these rule changes was supplied to the Commission and public. The rule numbers are being changed and the reporting is being changed to an electronic process. **Discuss at the next meeting.**
- **Review Lot Reservation Bulletin / Mickey**
Mickey will try to have this for the next meeting.
- **Trust Accounts and Bounced Checks Rule**

This item was discussed with the Sweeping of Title Trust Accounts, R592-12 (R590-187) agenda item above.

VIII. New Business

- **Dual licensing approval process** / Lincoln

He has filed paper work to be approved. Has it been approved? Mickey said the issue is not getting dual licenses but if you have one you must tell the department when you do a transaction. The department must then review it. The next transaction cannot be with the same party within 18 months of the first transaction. Mickey was aware of his filing. It would be taken care of today or tomorrow. **Put this on next month's agenda.**

- **Letter from Real Estate Division** / Jerry

Was their letter sent to real estate licensees as well as us? No. Canyon said that Caldwell is now complying with 61-2-10.

- **Annual report to Legislature** / Mickey

A copy of this report was given to the commission.

- **Market Conduct Director** / Mickey

The new Market Conduct Division director will attend next month's meeting.

- **Filing Fee** / Mickey

Agencies are currently charged \$25 for each filing made to the department. Insurers' licensing fee includes a service fee that takes care of filings and other services provided by the department during the year. He proposed something similar for title agencies. At renewal he proposed increasing their licensing fee by \$25 to take care of filings during the year. This will save them having to cut another check during the year. He asked that this be **added to next month's agenda.** All agreed.

IX. Other Business from Committee Members

None

X. Adjourned: 11:37am

XI. Next Meeting: November 10, 2008, 9a.m., Olmstead Room in East Building.

2008 Meetings

Nov 10, Olmsted Rm

Dec 8, Olmsted Rm